IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

WP.No.47855/2006
MP.Nos.2 to 4/06 & 3/07

1.S.Dhandapani
2.S.Padmanaban
3.S.Umapathy
4.S.Muthukrishnan
5.S.Parameswaran
6.S.Bhavani
7.S.Ramni
8.Gowri Petitioners

vs.

1.The Secretary, Government of Tamil Nadu
Municipal Administration and Water Supply
Department, Fort St.George, Chennai-9

2.The District Collector, Trichy

3.The District Revenue Officer, Tiruchirappalli.

4.The Commissioner of Land Administration
Chepauk, Chennai-5

5.The Trichirapalli City Municipal Corporation
by its Commissioner ,Tiruchirappalli.

6.Tamil Nadu Water Supply and Drainage Board
by its Managing Director, Chennai-5 Respondents

Prayer:- This Writ Petition is filed under Art.226 of the Constitution of India to issue a Writ of Certiorari to call for the records from the 1st Respondent relating to the GO.(3-Pa) No.28 Municipal Administration and Water Supply Department dated 20.11.2006, as published in the "Dhinakaran" daily dated 25.11.2006 and quash the said order.

For Petitioners : Mr.M.Muniruddin Sheriff
For Respondents : Mr.R.Viduthalai, AG for RR1to4
Mrs. Sudarsana Sundar-R5

ORDER

1.The case of the Petitioners is that they are joint owners of 23,304 sq.ft. of nanja lands comprised in T.S.No.2280/2 in Thiruvanai Koil,

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Trichy District; that in earlier occasion, some of the respondents herein attempted to dispossess the petitioners and that the petitioners filed a suit in OS.No.161/2004 before the Sub Court, Trichy, wherein interim injunction was granted and the said suit is still pending; that while things are such, the respondents issued GO (3D)No.28 Municipal and Water Supply Department dated 20.11.2006 under Section 4(1) of the Land Acquisition Act to acquire 17093 sq.ft of the said lands out of 23304 sq.ft comprised in TS.No.2280/2, invoking urgency clause under Section 17(2) of the said Act, dispensing with enquiry under Section 5A of the Act for the the purpose of establishing Sewage Pump for underground drainage system and the same was published in the Tamil Daily 'Dinakaran' on 25.11.2006; that the Respondents have neither assessed the value of the lands in dispute nor have deposited 80% of the land value as required by the Act; that in view of the said acquisition proceedings nothing survives in the suit; that the respondents failed to follow the mandatory provisions of Section 17 of the Act; that alternative lands of Government is available in plenty, but the respondents deliberately decided to acquire petitioner's land and hence, several cases were filed from 1967 onwards which were disposed of, now the present writ petition is filed to issue a Writ of Certiorari to call for the records from the 1st Respondent relating to the GO.(3-Pa) No.28 Municipal Administration and Water Supply Department dated 20.11.2006, as published in the "Dhinakaran" daily dated 25.11.2006 and quash the said order.

2. The case of the Respondents is that the 1st respondent issued GO.NO.24 Municipal Administration and Water Supply Department dated 23.7.2004, according administrative sanction for the implementation of underground drainage scheme in Trichirapalli City Corporation; that the petitioners knowing that their land has been proposed for acquisition filed a vexatious suit in OS.No.164/2004 and obtained interim injunction, without impleading the District Collector and the Special Tahsildar (LA) as the respondents and later they filed impleading petitions, which were allowed; that the petitioners, in the mean time, have filed WP.No.29937/04 before this court, which was disposed of 26.4.2006, directing the respondents to negotiate and arrive at a settlement and report it before 13.6.2006 and as per the direction, notices were issued to the land owners on 6.6.2006; that out of 8 land owners only 3 persons were present, out of them two persons have stated that the compensation due to the acquisition land has to be paid at the prevailing market rate and one person informed orally that he would take a decision after consulting his advocate, but nobody raised any objection for the proposed acquisition and final decision has not been arrived at and the same was reported to this court and ultimately the said writ petition was dismissed; that based on the administrative sanction order dated 23.7.2004, the Government in GO.(3D) No.9 Municipal Administration (MA3) Department dated 17.6.2005 approved the draft notification Under Section 4(1) and draft declaration under Section 6 of the Act, which was published in the Tamil Nadu Government Gazette dated 17.6.2005 and the above notification was published in the two local dailies Dinathanthi and Makkal Kural dated 23.6.2005 and the locality publication was made on

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24.6.2005; that the petitioners have filed another WP.No.23379/05, stating that their names are not found mentioned in the said notification, but their father's name, who died already, alone was found mentioned and the said writ petition was allowed and accordingly, the 1st respondent issued GO.(3D) No.27, Municipal Administration and Water Supply Department dated 20.11.2006, canceling the earlier notification dated 17.6.2006 in accordance with law, which was published in the Tamil Nadu Government Gazette No.322 dated 20.11.2006 and in the local dailies Dhinakaran and Malai Malar dated 25.11.2006 and the locality publication was made on 28.11.2006 and the draft declaration under section 6 of the Act has been approved by the Government in their GO.(3D) No.31 Municipal Administration and Water Supply Department 5.12.2006, which was published in the Government Gazette NO.334 dated 5.12.2006 and in the local dailies Dhinakaran and Tamil Murasu on 9.12.2006 and the locality publication was made on 21.12.2006; that the works relating to the said scheme completed about 52 kilometers out of 59 kilometers and the sewage pumping station is yet to be constructed and that the sewage pumping station was fixed in the proposed land acquisition site based on gravity of the land and suitability of location and there is no alternative suitable site except the proposed land to be acquired; that the under ground sewerage scheme was designed with a cost of Rs.120 crores in Trichirapalli Corporation and thereafter field survey was made and the proposed land acquisition site was selected for setting up of sewage pumping station and administrative sanction for installation of sewerage pumping station was accorded to an extent of 17093 sq.ft in TS.No.2280/2; that in respect of averment that 11.44 acres of lands belonged to Corporation is situated very nearer to the proposed sewerage pumping station, it is incorrect and it is not suitable for locating the pumping station.

3. The learned counsel for the petitioners has submitted that the notification under Section 4(1) of the Act passed by the 1st respondent for acquiring the petitioners lands invoking the urgency clause under Section 17(2) of the Act is wholly without jurisdiction and actuated by mala fides and not justifiable on the facts and circumstances of the case; that invoking emergency clause under Section 17(2) of the Act and dispensing with enquiry under Section 5A is illegal as there is no specific mentioning to the effect that enquiry under Section 5A of the Act is dispensed with as per Section 17(4) of the Act to dispense with the enquiry in the GO dated 23.7.2004; that the respondents ought to have noted that in WP.No.2555/1967 as early as 13.9.1969, mandamus was issued directing the respondents not to enter the lands without following the provisions of the Act; that for nearly 39 years, no steps were taken and having slept for 39 years, the respondents are estopped from invoking urgency clause under Section 17 (2) of the Act; that there is no justification to bye pass the regular provisions; that the very conduct of the respondents will show that there is no urgency and that the District Collector alone is competent to issue notification under Section 4(1); that the enquiry contemplated under Section 5A is a valuable right of a person whose property is sought to be acquired; that an order under Section 17(1) or 17(2) or 17(4) of the Act can be passed with respect to waste land

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and it cannot be invoked with respect to land in which building stands; that the lands sought to be acquired is in the midst of thickly populated residential locality and unfit for locating sewerage pumping station; that the local residents have sent numerous objections which has not been considered; that there are suitable government poramboke lands available in TS.No.34/1 and 34/2 in Ward III, Block I and lands to the north of Vibuthi praharam, where the proposed pumping station can be located without causing any hardship to any one; that there are 110.69 acres of government poramboke lands in TS.No.2065, 2069 and 2070; that in fact as present underground drainage system is completed and the pumping station can easily be located in the available poramboke lands without any extra expenditure; that the lands are situated very near to Srirangam Temple; that if sewerage pumping station is located it will not only affect the sanctity of the temple but will also lead to pollution, bad smell and will become a breeding place for mosquitos and cause severe health hazards to thousands of pilgrims who visit the temple every day; that it will affect the ecological balance in the locality.

4. The learned counsel for the petitioners relied on the decision decision of the Apex Court rendered in the case of Union of India and others Vs. Mukesh Hans, Etc. (V-2004-SLT-712), wherein it was held as under:-

> "28. A careful perusal of the above section shows that sub section (1) of Section 17 contemplates taking possession of the land in the case of an urgency without making an award but after the publication of Section 9(1) notice and after the expiration of 15 days of publication of Section 9(1) notice. Therefore, it is seen that if the appropriate Government decides that there is an urgency to invoke Section 17(1) in the normal course Section 4(1) notice will have to be published, Section 6 declaration will have to be made and after completing the procedure contemplated under Sections 7 and 8, 9(1) notice will have to be given and on expiration of 15 days from the date of such notice the authorities can take possession of the land even before passing of an award.
>
> 35.It is clear from the above observation of this court that right of representation and hearing contemplated under Section 5A of the Act is a very valuable right of a person whose property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of the property belonging to that person should not be made. Therefore, in our opinion, if the appropriate Government decided to take away this minimal right then its decision to do so must be based on material on record to support the same and bearing in mind the object of Section 5A."

5. The learned Advocate General for the Respondents has submitted that

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this is a case where the lands are acquired invoking the urgency clause and hence, preliminary inspection, preliminary enquiry, scrutiny of records, obtaining sufficient funds from the requisition body, ascertaining ownership were considered and draft notification was issued under Section 4(1) of the Act; that in earlier occasions, whenever the proceedings are initiated, the petitioners rushed to the court and obtained orders restraining the respondents from proceeding further; that the averment the respondents are avoiding poramboke lands, but deliberately chosen the lands of the petitioners is false; that the said 11.44 acres of lands are far away from the present land, moreover, it is not all suitable for locating the pumping station and that considering the technical feasibility and road gradient the lands of the petitioners were selected; that the averment that there is no order under Section 17(4) of the Act, dispensing with the enquiry under Section 5A is denied as untrue; that indeed the same is specifically mentioned that the petitioners refused to receive the notices, which were served by way of affixture in the doors in the presence of the private witnesses; that the administrative sanction for installation of sewerage pumping station was accorded vide GO.(3D) No.24 Municipal And Water Supply Department dated 23.7.2004; that the value of the land is more than Rs.10 lakhs and hence, the Government is the competent authority to issue notification and not the Collector as averred by the Petitioners; that considering the urgency, the enquiry under Section 5A was dispensed with and mentioning it, notification was made; that it is false to state that there are buildings available in the lands in dispute and that it is waste land and that the petitioners' land is just behind the existing sewerage pumping station at Vasudevan Street and that since the scheme is the expansion of the existing scheme, the site is selected after a complete technical investigation based on contour level and no objections have been received from the general public and prayed for dismissal of this writ petition.

6. The learned Advocate General for the respondents has relied on the decision rendered by the Apex Court in Union of India and others Vs. Krishnan Lal Arneja and others (2004-8-SCC-453), wherein it was held in paragraph 16 as under:-

> "Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5A of the Act. The Authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the

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nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry under Section 5A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but some times such urgency may arise unexpectedly, earthquake, flood or some specific time bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State Administration."

and the decision rendered by the Apex Court in A.P.Sareen and others Vs. State of UP and others, (AIR-1997-SC-1284), wherein, it was held as under:-

"3. The land stands vested in the State under Section 17(2) read with Section 16 free from all encumbrances. Since inquiry under Section 5A has been dispensed with, as provided under the Act, 80% of the compensation was required to be given to the claimants. In this case, instead of adopting the said procedure, after publication of the notification under Section 4(1), they published the notification in the local news papers in English as well as Hindi and also substance thereof in the locality and thereafter personal notices appear to have been issued to the owners of the lands. After completion of this process, proceedings were put up before the Government for publication of the declaration under Section 6 which came to be made on April 18, 1996. The appellant filed the Writ Petition on July 19, 1996 and consequently possession could not be taken. After the writ petition was disposed of, possession was taken on December 10, 1996. In this backdrop, the need of urgent possession was dissipated by beaurocratic inadvertence and the urgency did not cease. Urgency continues as long as the scheme is not initiated, action taken and process completed."

4. ...

5..... In view of this stand taken by the Government, the direction to conduct, an enquiry under Section 5A of the Act is of no material consequence on the facts of this case. Under those circumstances, we think that there is no

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justification to quash the declaration under Section 6 and to give direction to conduct an inquiry under Section 5A."

The learned Advocate General also relied on the decision rendered by the Apex Court in Deepak Pahwa etc. Vs. Lt.Governor of Delhi and others (AIR-1984-SC-1721), wherein, it was held as under:-

> "8. The other ground of attack is that if regard is had to the considerable length of time spent on interdepartmental discussion before the notification under Section 4(1) was published, it would be apparent that there was no justification for invoking the urgency clause under Section 17(4) and dispensing with the enquiry under Section 5A. We are afraid, we cannot agree with this contention. Very often persons interested in the land proposed to be acquired make various representations to the concerned authorities against the proposal acquisition. This is bound to result in a multiplicity of enquiries, communications and discussions leading to delay in the execution of even urgent projects. Very often the delay makes the problem more and more acute and increases the urgency of the necessity for acquisition. It is, therefore, not possible to agree with the submission that mere pre notification delay would render the invocation of the urgency provisions void."

7. This court considered the submissions of the learned counsel on either side and also perused the material records placed. The earlier writ petitions filed by the petitioners predecessors and the petitioners are not relevant at this stage, hence, the same is not narrated again. Similarly, the pending suit in O.S. No. 161 of 2004, as admitted by the petitioner's counsel became infructuous in view of the fact that proceedings under Land Acquisition Act is initiated.

8. The petitioners possessed 53 cents or 23304 sq.ft in TS.No.2280/2. The Government in their GO.(3D)No.24, Municipal and Water Supply Department dated 23.7.2004 have accorded sanction for acquisition of 17093 sq.ft of land out of 23304 sq.ft in TS.No.2280/2, leaving a portion of the land in TS.No.2280/2, in which the building is located and the petitioners are residing. The Government approved 4(1) Notification in their GO.(3D) No.28 Municipal and Water Supply Department dated 20.11.2006, which was published in Tamil Nadu Government Gazette No.322 dated 20.11.2006 and the same was published in the Tamil Dailies Dinakaran and in Malai Malar on 25.11.2006.

9. It is stated that already an existing sewage pumping station is located in TS.No.2280/1 adjacent to the petitioners' property and the petitioner's land is urgently needed for the execution of the National River Conservation Project as well as for the provision of sewerage facilities for the residents of Srirangam. It is further stated by the respondents that out 59 kilometers, 52 kilometers work was completed. Notices sent by the respondents under the Act and Rules to the petitioners were refused to be receive by them and the service was effected by way of affixture.

10. The respondents invoked Section 17 of the Act, under which special powers are given in case of urgency and the Section 17 of the Land

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Acquisition Act reads us under:-

"Special powers in cases of urgency: (1) In cases of urgency, whenever the appropriate Government so directs the Collector though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub section (1) take possession of any land needed for public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity, the Collector may, immediately after the publication of the notice mentioned in sub section (1) and with the previous sanction of the appropriate Government enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub section without giving to the occupier thereof at least forty eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub sections, the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees if any on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24 and in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

(3A) Before taking possession of any land under sub section (1) of sub section (2) the Collector shall, without prejudice to the provisions of sub section (3):-

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

(b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub section (2) and where the Collector is so prevented, the provisions of section 31, sub section (2) except the second proviso thereto, shall apply as they apply to the payment of compensation under that Section.

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(3B) The amount paid or deposited under sub section (3A) shall be taken into account for determining the amount of compensation required to be tendered under Section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under Section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub section (1) or sub section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply and if it does so direct, a declaration may be made under Section 6 in respect of the land at ay time after the date of the publication of the notification under Section 4, sub section (1).

11. It is evident from the above said Section 17 that as per Section 17 (1), the Government can taken possession of any land on the expiration of fifteen days from the date of publication of the notice mentioned in Section 9 (1), though no award has been passed. The object of Section 17(1) is that when there is an urgency for execution for public purpose, that can be done expeditiously by taking possession of the land without waiting for the award, however, subject to other conditions mentioned in sub clauses of Section 17. Section 17(2) empowers the Collector to take possession of the land, immediately after the publication of the notice mentioned in sub section (1) and with the previous sanction of the Government. It is needless to mention that it can be invoked only in cases of sudden change in the channel of any navigable river or other unforeseen emergency for any Railway Administration to acquire the immediate possession of land for the maintenance of their traffic or for the purpose of making thereon a river side or ghat station. As per amended Section 17(2), acquisition is possible even for dwelling houses for the poor and for various other purposes. To protect the interest of the land owners also, amendment was made thereby directing deposit of eighty per centum of the compensation as estimated by the Collector before taking possession. It is not in dispute that the the property is worth more than Rs.10 lakhs and hence, the Government is the competent authority to issue notification and accordingly, the notice impugned in this writ petition was issued.

12. Section 17(4) provides that in cases where the appropriate Government has come to the conclusion that there exists an urgency or unforeseen emergency as required under sub sections (1) or (2) of Section 17, it may direct that the provisions of Section 5A shall not apply and if such direction is given then 5A enquiry can be dispensed with and declaration may be made under Section 6 on publication of 4(1) notification possession can be made. Enquiry under Section 5A is a very valuable right of a person whose property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of the property belonging to that person should not be made. If the Government decided to take away this minimal right then its decision to do so must be based on materials on record to support the same and

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bearing in mind the object of Section 5A.

13. In this case, it is alleged that out of 59 kilometers, 52 kilometers work was already completed and further work could not be proceeded until the land in dispute is acquired and pumping station is erected. This court is of the considered view, after perusing the materials on record that urgency expressed by the respondents is established.

14. In so far as the ground of attack that considerable period has lapsed between the introduction of the scheme and the present notification and hence, there was no justification for invoking the urgency clause, dispensing with enquiry under Section 5A is concerned, the petitioners filed number of cases against the authorities, which resulted in a multiplicity of enquiries, communications and discussions leading to delay in the execution of this urgent project and the said delay would not render the invocation of the urgency provisions void, as has been held in Deepak Pahwa etc. Vs. Lt.Governor of Delhi and others (AIR-1984-SC-1721) cited supra.

15. In so far as the averment that alternative lands are not acquired, but the respondents deliberately chosen only the lands of the petitioners is concerned, the respondents in their counter, have categorically stated that the available poramboke lands are not suitable for the installation due to distance, technical feasibility and gravity of the lands and that the proposed land was selected based on the contour level. It is further submitted by the respondents that the proposed site is just behind the existing sewerage pumping station at Vasudevan Street and the said scheme is sought to be implemented for expansion of the existing sewerage system. Hence, the said averment that alternative lands are not acquired is untenable in law.

16. In so far as the other argument of the petitioners that the Collector is the competent authority to issue notification, but whereas in this case, the same was issued by the Government, is concerned, it is replied by the respondents that for exceeding Rs.10 lakhs, the authority competent to issue the notification is the Government and hence, the said averment cannot also be accepted.

17. In respect of the other averment that sanctum and sanctuary of the temple will be affected by the plant, the same can be taken care of by the respondents by providing necessary protection and applying technical and scientific infrastructures. In this case, declaration under Section 6 of the Act was made in the Government Gazette on 5.12.2006 and publications in the Newspapers were made on 9.12.2006 and 1.12.2006 following the mandatory provisions.

18. With regard to the averment that certain amount was deposited in the civil court, which is prior to the 4(1) Notification, the learned Advocate General, on instructions, has submitted that 80% of the amount will be deposited in accordance with law in time and the same is recorded.

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19.In view of the above said discussions, this writ petition is liable to be dismissed and accordingly, it is dismissed. No costs. Consequently, the connected Mps are closed.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To:

1.The Secretary, Government of Tamil Nadu
Municipal Administration and Water Supply
Department, Fort St.George, Chennai-9

2.The District Collector, Trichy

3.The District Revenue Officer, Tiruchirappalli.

4.The Commissioner of Land Administration
Chepauk, Chennai-5

5.The Trichirapalli City Municipal Corporation
by its Commissioner,Tiruchirappalli.

6.Tamil Nadu Water Supply and Drainage Board
by its Managing Director, Chennai-5

+ One cc to M/s. Sudharshana Sundar, Advocate SR 28140
+ One cc to P. Srinivas Advocate SR 28019
+ One cc to Mr. M. Munir Sheriff, Advocate SR 28370
+ One cc to Govt Pleader SR 28020

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